No. 5953

IN THE

United States Circuit Court of Appeals

FOR THE

NINTH CIRCUIT

TOSHIKO INABA,
Appellant,

vs.

JOHN D. NAGLE, Commissioner of Immigration, San Francisco, California,
Appellee.

BRIEF FOR APPELLEE

GEORGE J. HATFIELD,
United States Attorney,

WILLIAM A. O'BRIEN,
Asst. United States Attorney,
Attorneys for Appellee.

Neal, Stratford & Kerr, S. F.

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STATEMENT OF THE CASE.

Petitioner was born in Walnut Grove, County of Sacramento, State of California, on October 11, 1908. Petitioner, at the age of three, went to Japan on December 13, 1911, and there lived with her uncle, Juzo Inaba, her mother and father, Kazume Inaba and Hikotaro Inaba, remaining in the State of California. The petitioner remained in Japan until August 19, 1928, when she returned and sought entrance to the United States at the Port of San Francisco as a citizen of the United States, on September 3, 1928. On June 15, 1927, while so living in Japan, the petitioner mar-

ried Tirao Yamamoto, a citizen of the Empire of Japan, under the laws of Japan (Tr. p. 4). It is alleged in the petition for the writ that on September 22, 1927, four months after the marriage, the petitioner caused her family record to be changed so that she would not thereby be a member of the family of her husband, Torao Yamamoto. At the time petitioner sought entry to the United States at the Port of San Francisco on September 3, 1928, she was not possessed of a passport, or any visa endorsed thereon (Tr. p 5). but applied for admission as a citizen of the United States.

Thereafter, a hearing was had before a Board of Special Inquiry, and the Board denied petitioner admission in its decision of September 17, 1928, on the ground that she is a member of a race ineligible to citizenship, and had lost her American citizenship by marriage to an oriental. Thereafter, a rehearing was had on the matter before a Board of Special Inquiry, which denied petitioner admission on the same ground in its decision of November 5, 1928. Upon appeal to the Secretary of Labor, the Board of Review at Washington dismissed the appeal affirming the action of the Board of Special Inquiry here, in its decision of January 28, 1929.

Petitioner then filed a petition for a writ of habeas corpus in the District Court for the Southern Division of the Northern District of California, and a hearing was had on the order to show cause on March 25, 1929, at which time the matter was orally argued at length

by respective counsel, and ordered submitted on briefs before His Honor United States District Judge Harold Louderback. On August 22, 1929, the Court made its order denying the petition for the writ of habeas corpus, and dismissing the same. It is from that order that appellant appeals here.

ARGUMENT.

The Assignment of Errors (Tr. pp. 26, 27, 28, 29), and the appellant's opening brief raise, in the last analysis, two issues, so far as this Court is concerned:

> 1. HAVE THE IMMIGRATION AUTHORITIES MISCONSTRUED THE EXPATRIATION LAWS OF THE UNITED STATES?
>
> 2. DID THE IMMIGRATION AUTHORITIES ABUSE THE DISCRETION ENTRUSTED TO THEM IN FINDING AS A FACT THAT APPELLANT HAD LOST HER AMERICAN CITIZENSHIP THROUGH MARRIAGE?

1. What are the expatriation and immigration laws of the United States, applicable to the case at bar, and which, it is alleged, the Immigration Authorities have misinterpreted?

Section 3 of the Act of September 22, 1922 (8 U. S. C. A. Sec. 2) provides that:

> "A woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage, unless she makes a formal renunciation of her citizenship before a Court having jurisdiction over naturalization of aliens: *Provided that any woman citizen who marries an alien ineligible to citizenship shall cease to be a citizen of the United States.*"

The position of the Government here is, therefore, precisely this:

> "Any woman citizen of the United States who marries an alien ineligible to citizenship shall herself cease to be a citizen.
>
> But Toshiko Inaba, petitioner herein married an alien ineligible to citizenship, Torao Yamamoto.
>
> Therefore, she has ceased to be a citizen of the United States."

The proof of the major is supplied by the citation of the Expatriation Act set forth above.

As to the minor the case of

Ozawa v. United States, 260 U. S. 178.

is decisive.

> "A Japanese born in Japan, being clearly not a Caucasian, is 'ineligible to citizenship' in the United States under Revised Statutes 2169 and the Naturalization Act."

Section 2169 R. S., which is part of the Naturalization Act, declares, "The provisions of this Title shall apply to aliens, being free white persons, and to aliens of African descent."

As to the question, "What is the effect, if any, of the termination of the marriage upon the status of the petitioner's citizenship under the laws of the United States," the statutory law is conclusive. Section 7 of the Expatriation Act of September 22, 1922, expressly repealed Section 3 of the earlier act of March 2, 1907, which provided for the resumption of American citizenship of American born women upon the termination

of the marital status. Hence a woman who has lost her citizenship can now only regain it on termination of the marriage by full compliance with the immigration and *naturalization* acts.

Section 7 reads:

> "Sec. 7. That Section 3 of the expatriation act of 1907 is repealed. Such repeal shall not restore citizenship lost under such section nor terminate citizenship resumed under such section. A woman who has resumed under such section citizenship lost by marriage shall, upon the passage of this act, have for all purposes the same citizenship status as immediately preceding her marriage."

Counsel for appellant in his opening brief devotes a great deal of attention to the question of "What was the effect of the marriage of petitioner and her subsequent separation from her husband? (Pages 4 to 15, Appellant's opening brief). The elaborate argument of the learned counsel will not bear analysis, however, for the following reasons.

At the outset he confronts us with an apparent dilemma (page 4, Appellant's opening brief), which may be conveniently stated thus:

> "Either the validity of the marriage of the petitioner is to be determined by the laws of Japan or by the laws of the State of California.
>
> But, under the laws of the State of California the marriage is void, and under the laws of Japan the marriage is void.
>
> Therefore, in either case, there is no marriage and the petitioner is still a citizen of the United States."

As to the first horn of the alleged dilemma, we deem it a sufficient answer to say that if the validity of the marriage is to be determined by the laws of Japan, as we contend it is, the question of determining what is the law of Japan is a question of fact, and not of law, and therefore, the finding of the executive branch of the Government is conclusive. For this reason we shall not enter into any discussion here as to what the law of Japan is, and what is its effect in this particular situation, for the reason that the determination of such question is outside the jurisdiction of this court in the absence of an abuse of discretion. We shall discuss the question of whether or not there was an abuse of discretion by the executive branch of the Government hereafter in considering what we perceive to be the second main issue presented here, and referred to above at the outset.

Our reason for maintaining that the question as to what is the law of Japan is outside the jurisdiction of this court, is this: What is the law of a foreign jurisdiction, is a question of fact. Any citation of authority upon this proposition would be superfluous, hence the finding of the executive branch of the Government on that question is conclusive. For where there is jurisdiction, a finding of fact by the executive department is conclusive.

U. S. v. Ju Toy, 198 U. S. 253;
Leong Shee v. White, 295 Fed. 665;
Gonzales v. U. S., 192 U. S. 1;
U. S. v. Arredondo, 6 Pet. 691 (at 729);
Quinby v. Conlan, 104 U. S. 420;
U. S. v. Calif. Land Co., 148 U. S. 41 (at p. 43);
Fung Tun v. Edell, 223 U. S. 673 (at 675).

As to the other horn of the alleged dilemma, namely, that the validity of the marriage should be determined by the laws of the State of California, this court has decisively settled that in the case of

> *Ng Suey Hi v. Weedin,* 21 Fed. (2d) 801, 9th Circuit, decided October 10, 1927.
>
> "The general rule is that the validity of a marriage is determined by the law of the place where it was contracted. If valid there it will be held valid everywhere. *38 Corpus Juris 1276.*"

Travers v. Reinhardt, 205 U. S. 423, 51 L. Ed. 865;
Gaines v. Relf, 13 L. Ed. 1071, 12 How. 472;
Hallet v. Collins, 10 How. 174, 13 L. Ed. 376;
Patterson v. Haines, 6 How. 550, 12 L. Ed. 553;
Ex parte Suzzana, 295 Fed. 713.

See also:

La Mar v. Micou, 112 U. S. 470, 471 to 473;
Tsoi Sim v. U. S., 116 Fed. 920;
Ex parte Goon Dip, 1 Fed. (2d) 811;
U. S. v. Day, 28 Fed. (2d) 44.

Plainly the validity of the marriage is to be determined not by the "lex domicilli" of the wife, or even of the husband, but by the "lex loci contractus", which, in this case, is the law of Japan.

We pause here to consider the contention made by counsel for appellant at page 12 of his opening brief: "Even if we concede there has been a marriage and no annulment, there has at the very least been a divorce or termination of the marriage, and *petitioner has the right to re-enter the United States for the purpose of regaining her citizenship.*"

Counsel claims that the case of

> *Yoshiko Hoshino,* No. 1466 United States District Court for the territory of Hawaii, decided November 22, 1927,

is authority for this contention. The case is authority for no such proposition. In that case a Japanese woman who was born in Hawaii, and *had lived in Hawaii all her life,* having lost her American citizenship by marriage to a Japanese alien, applied to the District Court of the Territory of Hawaii *for naturalization,* the marriage relation having terminated. The court took the view that the racial limitation upon naturalization, which restricts that privilege to "aliens being free white persons, and to aliens of African nativity and to persons of African descent", should not be considered applicable to persons who had once been American citizens by reason of birth, and hence that the petitioner was eligible to citizenship and might be naturalized.

The distinction is plain. There the question was: Whether or not a woman born in the Territory of the United States, who had never left the Territory of the United States, *who was at the time in the Territory of the United States,* could be naturalized. Here the question is: Whether a woman born in the United States, who has lost her American citizenship, who is not now in the United States, but is seeking entry, *can enter the country* as a citizen. What was involved there was the Naturalization Law; what is involved here is the Immigration Law.

If appellant is now an alien ineligible to citizenship as we contend she is, that fact merely provides an additional reason why she may not now enter the United States, for "no alien ineligible to citizenship shall be admitted to the United States" (8 U. S. C. A. 213). On the other hand, if appellant is not ineligible to citizenship, being an alien, her entry without an immigration visa is prohibited by Subdivision A of 8 U. S. C. A. 213:

> "No immigrant shall be admitted to the United States unless he has an unexpired immigration visa."

The petition itself shows that petitioner has no such visa. She could not enter without such a document even if she were of the white race and eligible to citizenship. That she is ineligible to citizenship is only one of the grounds upon which the Board found that she was inadmissible. The other ground is that she had not sustained the burden of proof imposed upon her by Section 23 of the Immigration Act of 1924 (8 U. S. C. A. Sec. 221), of showing that she is not subject to exclusion under any provision of the immigration laws. Her lack of an immigration visa of itself subjects her to exclusion under Section 13, cited supra.

As to the contention of counsel under discussion, viz., that petitioner should be permitted to enter the United States so that she may become naturalized, the mutual relation of the Immigration Laws to the Naturalization Laws is well defined in the case of

In re Jensen, 11 Fed. (2d) 414,

wherein the court said:

> "The Immigration Law defines the terms under which aliens may be admitted into the country, whilst the Naturalization Law prescribes how they may subsequently apply for the privilege of citizenship, which can in no case be claimed by them as a matter of right. These statutory provisions must therefore be strictly construed against the alien, upon whom the burden of proof rests to affirmatively show by competent evidence his compliance in detail with the Immigration Law and regulations, as a condition precedent to the filing of an application for citizenship under the Naturalization Law."

Further, Section 12 of the Immigration Act of 1924 (8 U. S. C. A. 212) provides:

> "An immigrant born in the United States who has lost his United States citizenship shall be considered as having been born in the country of which he is a citizen or subject, or if he is not a citizen or subject of any country, then of the country from which he comes."

We consider the above citation of authority to be decisive of the question raised by counsel at page 12 of Appellant's opening brief, to the effect that "petitioner has the right to re-enter the United States for the purpose of regaining her citizenship."

The case at bar, while not a usual one, is not novel. We here respectfully submit an authority that is precisely in point, and which counsel has neglected to mention in his opening brief.

> *Ex parte Fung Sing,* 6 Fed. (2d) 670, decided by United States District Judge Neterer for the Western District of Washington, July 1, 1925.

The facts in this case were as follows:

The petitioner was born in the State of Washington, in October, 1898, of Chinese parents. In 1903 she was taken by the parents to China, where in February, 1920, she married a citizen of China. Her husband died July 2, 1924. Thereafter, the petitioner arrived at the Port of Seattle in April, 1925, to return to the United States to resume her American citizenship. She was denied admission, because she is ineligible for citizenship, and excluded under the Immigration Act of 1924. She sought release under a writ of habeas corpus. An order to show cause was issued.

The court held that: *"A woman of Chinese race, born in the United States who married a Chinese citizen is for purposes of admission or citizenship on termination of the marital relation considered as born in the country of which she was a citizen, namely, China, and being of an excluded race, a citizen of an excluded racial country, was not eligible for citizenship and should not be admitted."*

What distinction, if any, exists between the case of the Chinese woman and the Japanese woman whose case is at bar here?

This decision of Judge Neterer was approvingly cited by the United States Circuit Court of Appeals for the First Circuit in the case of

Lee Tai v. Tillinghast

as recently as November 27, 1928. (29 Fed. (2d) 350).

2. DID THE IMMIGRATION AUTHORITIES ABUSE THE DISCRETION ENTRUSTED TO THEM IN FINDING AS A FACT THAT APPELLANT HAD LOST HER AMERICAN CITIZENSHIP THROUGH MARRIAGE?

While this question is not so clearly set forth in Appellant's Opening Brief, we perceive it to be the ultimate question underlying the balance of the propositions contended for by Appellant in his opening brief, and the only question which this court must finally determine.

Appellant contends that "a case involving United States citizenship is "SUI GENERIS". It is no such thing. That no implied exception exists in the case of those, having once been citizens by birth, and who have lost their American citizenship, is clear from Section 12 of the Immigration Act of 1924 (8 U. S. C. A., Sec. 212) cited supra. Further,

> "A citizen of the United States who has become expatriated is in the same situation as though alien born."
>
> *Reynolds v. Haskins,* 8 Fed. (2d) 473, 11 C. J. 786;
>
> *United States v. Ju Toy,* 198 U. S. 252, at page 262.

> "It is established, as we have said, that the act purports to make the decision of the Department final, whatever the ground on which the right to enter the country is claimed—as well when it is citizenship as *when it is domicil and the belonging to a class excepted from the exclusion acts.* United

States v. Sing Tuck, 194 U. S. 161, 167; Lem Moon Sing v. United States, 158 U. S. 538, 546, 547."

Concluding the argument on this proposition, counsel states that the only contention made by him is that American citizenship could not be taken away on any trivial, unsatisfactory or frivolous grounds. If by this he means that this court should determine the question as we have stated it here, namely, whether or not the Immigration Authorities exceeded their jurisdiction or abused the discretion entrusted to them in finding as a fact that appellant had lost her American citizenship, we concur. But if he means that the case of an alien immigrant ineligible to citizenship, who was at one time a citizen of the United States, stands on any different footing, or should be regarded or treated any differently than the case of any other alien immigrant ineligible to citizenship, we must strongly dissent in view of the finality with which the authorities cited above settle that question.

Counsel then contend that:

"The decision of the Board of Special Inquiry and of the Secretary of Labor are erroneous in law, and that said officials have misconstrued the expatriation laws of the United States."

He then proceeds to cite the case of

Ex parte Hing, 22 Fed. (2d) 554,

still insisting that the case at bar is "sui generis", which contention we have just disposed of. We submit

that what the case of Ex parte Hing holds is simply this, and nothing more.

> "There is *no competent evidence* before the court to show that the applicant has been legally married, or that there has been consummated a relation which binds the applicant to her alleged husband, upon which she could predicate a claim for support, or inheritable right of a surviving spouse in the event of death."

The case of Ex parte Hing does specifically state, among other things, that

> "A person, however, may expatriate himself. 15 Stat. 223, Act July 27, 1868 (8 U. S. C. A. Secs. 13-15). The Congress may provide that marriage to an alien shall effect expatriation. McKenzie v. Hare, 239 U. S. 299, 36 S. Ct. 106, 60 L. Ed. 297, Ann. Cas. 1916 E-645; Act of Cong. Sept. 22, 1923, Sec. 3 (8 U. S. C. A. Sec. 9)."

And further:

> "This court may not take judicial notice of foreign laws or customs; the court must apply local laws and customs to any controverted fact, in the absence of proof."

And further, at page 556 (7, 8):

> *"If the applicant is legally married to an alien ineligible to citizenship, she has expatriated herself, and may not be admitted. Ex parte (Ng) Fung Sing supra."*

We cannot, therefore, agree with counsel when he says, (p. 19, Ap. Op. Br.) "That the Hing case unequivocably holds that in such a case as the case at bar

the court may go fully into the facts and is not bound by the findings of the Immigration Department", thereby implying that the petitioner is entitled to a hearing on the merits de novo. It is hardly necessary to point out that the inquiry, so far as this honorable court is concerned, is strictly limited to the legal question as to whether or not the executive branch of the Government, acting through the Immigration Authorities, has acted unfairly or capriciously, and denied the applicant a fair hearing.

Counsel then sets forth and discusses, (pages 20 to 24, Ap. Op. Br.) various authorities with which we find no occasion to disagree, for they are all ultimately to the effect that Congress has made the executive branch of the Government the sole and exclusive judge of the facts in cases of this character, and that the finding of the Executive Department is conclusive. All of the authorities cited by counsel, therefore, simply go to support the position that we have taken here. He apparently cites them, judging by the italicized portion of the quotations, upon the theory that "the case of an alien once a citizen is "sui generis", which contention we have already disposed of.

The Supreme Court of the United States in the case of

> *Ng Fung Ho v. White,* 259 U. S. 276, at page 282,

cited by counsel (pp. 25, 26, Ap. Op. Br.), lays down this rule:

> "If at the time of the arrest they had been in legal contemplation without the borders of the United States, seeking entry, the mere fact that they claimed to be citizens would not have entitled them under the Constitution to a judicial hearing. United States v. Ju Toy, 198 U. S. 253; Tang Tun v. Edsell, 223 U. S. 673."

It is then contended by appellant in the case at bar that "The finding of the Immigration Department is so palpably unsupported by the testimony of the witnesses, that such hearing is tantamount to an unfair hearing" (p. 24, App. Op. Br.). Anent this, he ultimately contends:

1. There has been a denial of a fair hearing.
2. The finding was not supported by the evidence.
3. That there was the application of an erroneous rule of law. (p. 26 App. Op. Br.)

It is conceded that these are questions which this court can decide.

As to 1 and 2, as to the law applicable here, we regard any extensive citation of authority as idle and superfluous, but for the sake of clarity we here state the law as we understand it to be, as so often and so recently clearly interpreted by this honorable court.

> *Chin Share Nging v. Nagle,* 27 Fed. (2d) 848, decided August 20, 1928, in which His Honor Judge Dietrich spoke for this court:
>
> "The law in such case is too well settled to require citation: The conclusions of administrative officers upon issues of fact are invulnerable in the courts, unless it can be said that they could not reasonably have been reached by a fair minded man, and hence are arbitrary."

See also

Gung You v. Nagle, C. C. A. 5809, decided September 23, 1929, opinion by His Honor United States Circuit Judge Wilbur, 34 Fed. (2d) 848,;

Quan Jue v. Nagle, C. C. A. 5868, decided October 28, 1929, opinion by United States Circuit Judge Dietrich;

Tse Yook Kee v. Weedin, C. C. A. 5909, decided November 25, 1929, opinion by United States Circuit Judge Dietrich.

The facts as disclosed by the transcript, which is before this court, are that the appellant, her father, and her brother, all testified that her marriage had taken place in accordance with the laws of Japan (Tr. pp. 15, 16, 17). The Japanese Consul General at San Francisco certified that "the registration of Toshiko Inaba into the family of Hanzo Yamamoto constituted legal marriage with Torao Yamamoto (Tr. p. 18).

Hence, it cannot be contended that there was no evidence to support the fact found by the executive officers that a lawful marriage had occurred. The father of the appellant testified that his formal consent was not necessary, as he entrusted the matter to his brother who arranged the marriage, appellant's father and uncle having discussed the matter when her afther was in Japan in 1926 (Tr. p. 17).

In view of this testimony, and such consistent undisputed testimony, can it be said that reasonable men could have come to any other conclusion but that ap-

pellant was legally married under the laws of Japan? We respectfully invite the court's attention to the fact that the argument of counsel for appellant, as set forth in his opening brief, on the fairness of the hearing, is based largely upon facts which do not appear in the record or in the transcript that is before this court. Counsel attempts to testify in his brief as to what is the law of Japan (App. Op. Br., pp. 5, 6, 8, 9), which, of course, is a question of fact which this court cannot inquire into. The place to establish these facts was before the fact finding tribunal, i.e., the Immigration Authorities, at the hearing *and rehearing.*

> "It is evident that petitioner sought relief from the court, not upon any ground advanced or relied upon when he was examined by the Immigration Officials, but upon a new ground, which is founded on truth, could and should have been brought to the attention of the executive authorities before judicial relief was sought."
>
> *Nagle v. Toy Young Quen,* 22 Fed. (2d) 18.

The record disclosed that the Immigration Authorities conceded that the re-registration of the appellant back into her own family was a legal termination of the marriage under Japanese law.

This brings us to a consideration of 3, that "There was the application of an erroneous rule of law", or, as formerly stated by appellant in his final contention,

> "There is a vital distinction between expatriation accomplished by an actual renunciation of allegiance by becoming a naturalized citizen of another country, than that brought about by the marriage of an American born woman to an alien ineligible to citizenship."

We prefer to state the question succinctly thus:

WHAT IS THE EFFECT OF A MARRIAGE OF A CITIZEN OF THE UNITED STATES UNDER SECTION 3 OF THE ACT OF SEPTEMBER 22, 1922, WHICH PROVIDES "THAT ANY WOMAN CITIZEN WHO MARRIES AN ALIEN INELIGIBLE TO CITIZENSHIP SHALL CEASE TO BE A CITIZEN OF THE UNITED STATES?"

In arguing that there is a distinction between expatriation accomplished by actual renunciation, and that brought about by marriage to an alien ineligible to citizenship, counsel evidently proceeds upon the theory that the case of a quondam citizen is "sui generis". His argument is, therefore, vitiated by an erroneous assumption, which we have disposed of heretofore. He states "that nowhere have we been able to find a case holding that where an American born woman has so lost her citizenship, she may not regain it, but must thenceforth be without a country." We again respectfully invite attention to Judge Neterer's decision in the case of *Ex parte Fung Sing,* cited and discussed supra. The argument is concluded at page 27 of the Opening Brief, which argument, by the way, is absolutely devoid of support by any authority whatsoever, with the statement that in the case of a loss of citizenship by renunciation, loss is irrevocable, and that in the case of marriage of a citizen to an alien incligible to citizenship the loss is subject to the right to regain it upon termination of the marriage. We submit that the authorities are all the other way.

The leading case of

MacKenzie v. Hare, 239 U. S. 289,

in which the Supreme Court of the United States affirmed the decision of the Supreme Court of the State of California, is decisive.

> "The plaintiff was born and ever since has resided in the State of California. On August 14, 1909, being then a resident and citizen of this State and of the United States, she was lawfully married to Gordon Mackenzie, a native and subject of the kingdom of Great Britain. He had resided in California prior to that time, still resides here and it is his intention to make this State his permanent residence. He has not become naturalized as a citizen of the United States and it does not appear that he intends to do so. Ever since their marriage the plaintiff and her husband have lived together as husband and wife. On January 22, 1913, she applied to the defendants to be registered as a voter. She was then over the age of twenty-one years and had resided in San Francisco for more than ninety days. Registration was refused to her on the ground that *by reason of her marriage to Gordon Mackenzie, a subject of Great Britain, she thereupon took the nationality of her husband and ceased to be a citizen of the United States.*"
>
> * * * * * * *
>
> "The question then is, Did she cease to be a citizen by her marriage?
>
> * * * * * * *
>
> "Its (the Act's) declaration is general, 'that any American woman who marries a foreigner shall take the nationality of her husband.' There is no limitation of place; there is no limitation of effect, the marital relation having been constituted and continuing. For its termination there is provision, and explicit provision. At its termination she may resume her American citizenship if in the United States by simply remaining therein; if

abroad, by returning to the United States, or, within one year, registering as an American citizen. The act is therefore explicit and circumstantial. *It would transcend judicial power to insert limitations* or conditions upon disputable considerations of reasons which impelled the law, or of conditions to which it might be conjectured it was addressed and intended to accommodate."

* * * * * * *

"It may be conceded that a change of citizenship cannot be arbitrarily imposed, that is, imposed without the concurrence of the citizen. The law in controversy does not have that feature. It deals with a condition voluntarily entered into, with notice of the consequences. We concur with counsel that citizenship is of tangible worth, and we sympathize with plaintiff in her desire to retain it and in her earnest assertion of it. But there is involved more than personal considerations. As we have seen, the legislation was urged by conditions of a national moment. And this is an answer to the apprehension of counsel that our construction of the legislation will make every act, though lawful, as marriage, of course, is, a renunciation of citizenship. The marriage of an American woman with a foreigner has consequences of like kind, may involve national complications of like kind, as her physical expatriation may involve. Therefore, as long as the relation lasts it is made tantamount to expatriation. This is no arbitrary exercise of government. It is one which, regarding the international aspects, judicial opinion has taken for granted would not only be valid but demanded. It is the conception of the legislation under review that such an act may bring the Government into embarrassments and, it may be, into controversies. *It is as voluntary and distinctive as expatriation and its consequence must be considered as elected.*"

* * * * * * *

"All the courts have agreed, however, that the entire subject of naturalization and expatriation,

including the method by which each might or could be accomplished and manifested, is a matter within the exclusive control of Congress."

* * * * * * *

"There is no escape from the conclusion that, under the provisions of this section, the plaintiff in this case, when she married Gordon Mackenzie, a British subject, thereupon took the nationality of her husband and ceased to be a citizen of the United States. Just as an alien woman who marries a citizen becomes a citizen herself, *whether she wishes it or not,* as the cases we have cited, declare, so a female citizen who marries an alien becomes herself an alien, whether she intends that result as the consequence of her marriage or not. *She must bow to the will of the nation as expressed by the act of Congress.* Owing to the possibilities of international complications, the rule has generally prevailed, from considerations of policy, that the wife should not have a citizenship, nor an allegiance, different from that of her husband. The section aforesaid was intended to put this general doctrine into statutory form. *When, after Congress by this act had declared that her marriage to an alien would accomplish her expatriation, she thereafter married an alien, she is conclusively presumed to have intended thereby to renounce her citizenship of the United States and become a subject of Great Britain."*

* * * * * * *

"As we have held that the act of the plaintiff here in marrying an alien was in effect a renunciation of her citizenship, it follows that she is not prevented from committing this act of expatriation by the aforesaid provision of the fourteenth amendment."

It will be observed that the facts in the Mackenzie case were even stronger than they are here. Neither Mackenzie nor the wife ever left California; she had always resided here; they were married under the laws

of this State, nor was the husband, as here, a member of a race ineligible to citizenship, yet the Supreme Court of this State and of the United States held that the effect of the marriage was to expatriate the wife.

Further the later statute which is invoked in the case at bar and applies here is even stronger. It declares in effect that marriage to an alien ineligible to citizenship *automatically* alters the *status* of the American wife.

SUMMARY AND CONCLUSION.

We have here, therefore, the case of one who, it is conceded, because of her birth in this country was a citizen of the United States, but who, it is contended, under the statute lost her citizenship because she married an alien ineligible to citizenship.

The marriage was consummated under the laws of the Empire of Japan. The validity of the marriage is to be determined by the lex loci contractus. What is the law of this foreign jurisdiction, Japan, is a question of fact, of which this court will not take judicial notice. Questions of fact are for the executive.

Where the Executive Branch of the Government, acting through the Immigration Authorities, makes a finding of fact, such finding is conclusive upon the judiciary, except where it appears that such finding could not have been reached by fair minded men, and hence is arbitrary. The record, as disclosed by the transcript, indicates no such abuse of discretion, but, on the contrary, shows that reasonable men could not

very well have come to any other conclusion. This is the law, and the fact that appellant here is a quondam citizen does not change the situation in any respect whatsoever.

Petitioner, if eligible to citizenship, can enter the country either as an immigrant, in which case she must have an immigration visa, or as a citizen. But petitioner has no immigration visa, and further, is now an alien ineligible to citizenship, and hence cannot enter the country for the purpose of becoming naturalized. Nor can she enter the country as a citizen, for she has ceased to be a citizen by her marriage to an alien ineligible to citizenship. This is the inescapable conclusion, because the effect of the statute in question is to automatically alter the status of the American wife.

The statute is far sweeping and general in its language and effect. It provides for no limitations or conditions and the Supreme Court of the United States says that "it would transcend judicial power to insert limitations or conditions." It is automatic in its operation, the act of marriage automatically produces expatriation, counsel has failed to point out any limitation or conditions for there are none, and we respectfully submit the statute involved here.

> "* * * A woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage, unless she makes a formal renunciation of her citizenship before a court having jurisdiction over naturalization of aliens; provided, *that any woman citizen who*

marries an alien ineligible to citizenship shall cease to be a citizen of the United States."

Respectfully submitted,

GEO. J. HATFIELD,
United States Attorney,

WILLIAM A. O'BRIEN,
Asst. United States Attorney,
Attorneys for Appellee.